



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 8, 2005

Mr. Galen Gatten  
Assistant City Attorney  
City of Midland  
P. O. Box 1152  
Midland, Texas 79702-1152

OR2005-05001

Dear Mr. Gatten:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 225606.

The Midland Police Department (the "department") received a request for information related to report number 0407300011 and a particular accident. You state that some responsive information has been released to the requestor. You claim that some of the requested information is excepted from disclosure under section 552.130 of the Government Code. We also understand you to claim that section 552.101 excepts some of the submitted information. We have considered the exceptions you claim and reviewed the submitted information.

We will first address your responsibilities under the Act. Subsections 552.301(a) and (b) of the Government Code provide:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

Gov't Code § 552.301(a), (b). You inform us that the department received the request for information on March 16, 2005. You did not request a decision from this office until March 31, 2005. Consequently, you failed to request a decision within the ten-business-day period mandated by section 552.301(b) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Because the assertion of sections 552.101 and 552.130 of the Government Code may provide compelling reasons to overcome the presumption of openness, we will address your arguments. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

Next, we note that the submitted information contains an accident report form that appears to have been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states that, except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, a governmental entity is required to release a copy of an accident report to a person who provides two or more pieces of information specified by the statute. *Id.* The requestor has provided the department with the required information pursuant to section 550.065(c)(4); thus, the department must release the accident report in its entirety under this section. *See* Open Records Decision No. 525 (1989) (construing statutory predecessor, found that exceptions found in the Act generally do not apply to information made public by other statutes).

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information protected by other statutes. Gov't Code § 552.101. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act. *See* 42 U.S.C. § 405(c)(2)(C)(viii)(I); Open Records Decision No. 622 (1994). We note that the federal law

protects privacy, and privacy is a personal right that lapses at death. Therefore, the social security number of the deceased individual may not be withheld under section 552.101 of the Government Code on the basis of section 405(c)(2)(C)(viii)(I). *See Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145 (N.D. Tex. 1979); Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 (1981). You claim that the remaining social security number falls under the federal Social Security Act because it was obtained pursuant to section 411.086 of the Government Code. That provision contemplates rules that the Department of Public Safety (the “DPS”) shall adopt in regard to requests for criminal history information. Section 411.086(b)(2) states that such rules “may require a person requesting criminal history information about an individual to submit to [DPS] one or more of the following: . . . (E) any known identifying number of the individual, including social security number . . . .”

While you state that the collection of social security numbers “by police officers helps establish identities of criminals,” you do not specifically state whether the department obtained or maintained the social security number at issue in order to request criminal history information from DPS. Moreover, you do not inform us as to whether DPS actually requires or required the department to submit the social security number at issue in order to request criminal history information. We find that if the department obtained or maintains the social security number in order to request criminal history information from DPS, and if DPS actually requires or required the department to submit the social security number with its request for criminal history information, then the social security number is confidential under section 411.086 of the Government Code in conjunction with federal law.

Section 552.101 also encompasses common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. In addition, this office has found that the following types of information are excepted from required public disclosure under common-law privacy: personal financial information not relating to a financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990); some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982).

After review of the submitted records, we find that some of the information is protected from disclosure by common-law privacy. However, we note that the information at issue pertains

to the deceased individual. Because the right of privacy lapses at death, information pertaining solely to the deceased individual may not be withheld on the basis of common-law privacy. *See generally Moore*, 589 S.W.2d 489; *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-47; Attorney General Opinions JM-229; H-917; Open Records Decision No. 272 at 1. Accordingly, we have marked the information in the submitted documents that must be withheld pursuant to section 552.101 in conjunction with common-law privacy, provided that it implicates the common-law privacy rights of individuals other than the deceased individual.

You assert some of the remaining information is excepted under section 552.130. Section 552.130 of the Government Code provides in relevant part the following:

(a) Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130. The department must withhold the Texas motor vehicle record information in the remaining documents that we have marked under section 552.130. We note, however, that the purpose of section 552.130 is to protect the privacy interests of individuals. Some of the submitted motor vehicle information pertains to an individual who is deceased. Since the right of privacy lapses at death, the department may not withhold the Texas motor vehicle information contained in the submitted documents that pertains to a deceased individual. *See generally Moore*, 589 S.W.2d 489; *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. at 146-47; Attorney General Opinions JM-229; H-917; Open Records Decision No. 272 at 1. If, however, a living individual has an ownership interest in the vehicle at issue, the Texas motor vehicle record information pertaining to the living individual must be withheld under section 552.130.

Lastly, we note that section 552.136 of the Government Code is applicable to some of the submitted information.<sup>1</sup> This exception provides as follows:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

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<sup>1</sup>Section 552.136 also is a mandatory exception to disclosure and may not be waived. Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001).

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. We have marked an insurance policy number that must be withheld under section 552.136 if a living individual has an interest in the insurance policy. Because section 552.136 also protects privacy interests, information that relates only to a deceased individual may not be withheld under this exception. *Moore*, 589 S.W.2d 489; *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145; Attorney General Opinions JM-229; H-917; Open Records Decision No. 272.

To conclude, (1) the department must release the accident report in its entirety pursuant to section 550.065(c)(4) of the Transportation Code; (2) the department may be required to withhold the social security number of a living individual under section 552.101 in conjunction with section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code; (3) the information we have marked must be withheld under section 552.101 in conjunction with common-law privacy if it pertains to a living individual; (4) the Texas driver's license and motor vehicle information related to living individuals must be withheld under section 552.130; and (5) the insurance policy number must be withheld under section 552.136 to the extent that a living individual has an interest in the insurance policy. The rest of the submitted information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the

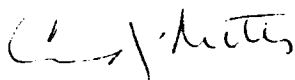
statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/krl

Ref: ID# 225606

Enc. Submitted documents

c: Ms. Julie Martinez  
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(w/o enclosures)